

Appl. No. 10/782,806
In re Van Der Meulen, J.
Reply to Office Action of June 8, 2007

REMARKS/ARGUMENTS

The Examiner is thanked for the Official Action dated June 8, 2007. This request for reconsideration is intended to be fully responsive thereto.

Claims 1-8 were rejected under 35 U.S.C. 103(a) as being unpatentable over Bartholomae (USP 976,718) in view of Simons et al. (USP 6,091,009). The applicant respectfully disagrees.

Regarding claim 1: The Examiner erroneously alleges that Bartholomae teaches a set of clave blocks (j and j') each comprising a rigid body made of solid material (Figs. 1 and 3) and having an open cavity (k and m) therewithin defined solely by the solid material (Figs 1-4), and the bodies having substantially equal exterior dimensions and generating musical tones of a variety of pitches (page 1, lines 50-54). The examiner concedes that Bartholomae does not mention expressly: different volumes of the open cavities therewithin provided to generate musical tones of a variety of pitches.

First, contrary to the examiner's allegations, Bartholomae teaches a sounding toy "in the nature of rattles" (page 1, lines 10-12) including two sounding members (j and j'). One of ordinary skill in the musical art would not interpret the rattle-type sounding toy as the set of clave blocks.

Second, contrary to the examiner's allegations, Bartholomae does not mention that the

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sounding members (j and j') substantially equal exterior dimensions, as he does not mention that they have different volumes of the open cavities therewithin.

Third, Bartholomae mentions that the sounding members (j and j') may be of different tones (page 1, lines 50-51), however Bartholomae is silent about how the sounding members (j and j') may be of different tones.

Fourth, Bartholomae discloses two different embodiments of the sounding toy shown in Figs. 1 and 2 (1st embodiment) and Figs. 3 and 4 (2nd embodiment). In the 1st embodiment, Bartholomae shows two sounding members (j and j') that appear to have substantially equal exterior dimensions and the substantially equal volumes of the open cavities therewithin (see Fig. 2). In the 2nd embodiment, Bartholomae shows three sounding members (j, j' and j''): the sounding members (j and j') appear to have substantially equal exterior dimensions and the substantially equal volumes of the open cavities therewithin, while the sounding member j'' appears to have the exterior dimension and the internal volume substantially bigger than those of the sounding members (j and j') (see Fig. 4). For this reason, the sounding member j'' produces the tone different than the sounding members (j and j').

Therefore, Bartholomae fails to disclose the set of clave blocks having different volumes of the open cavities formed therewithin, but substantially equal exterior dimensions.

The examiner further erroneously alleges that Simons teaches "a block-type percussion musical instrument (Figs. 1-4), including bodies (21) having open cavities (25, 32 and 33), and different volumes of said open cavities therewithin provided to generate musical tones of a

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variety of pitches (col. 3, lines 29-36 and lines 61-65)”.

First, the examiner erroneously interprets the element 21 of Simons as the bodies (in plural), although Simons clearly discloses the element 21 as a single chamber in an agogo bell 20 (see col. 3, lines 4-5 and Fig. 1). The chamber 21 has a single body 23 (see col. 3, line 6 and Fig. 1). In other words, contrary to the examiner’s allegations, Simons fails to disclose the set of clave blocks each comprising a rigid body having an open cavity therewithin defined solely by said solid material. Thus, Simons fails to disclose two or more separate bodies each having a cavity therein. Clearly, those skilled in the art would not interpret the single chamber 21 (or the single body 23 for that matter) as a plurality of bodies.

Second, the elements 32 and 33 of Simons are slots in the sides of the body 23, not cavities, as clearly described by Simons (see col. 3, lines 30-33). Clearly, those skilled in the art would not interpret the slots 32 and 33 as cavities within the body 23. Moreover, claim 1 recites cavities in different bodies, while the slots 32 and 33 are formed in the same body 23.

Third, contrary to the examiner’s allegations, Simons does not mention that the bell 20 is provided to generate musical tones of a variety of pitches.

Therefore, nowhere in the specification Simons teaches or suggests the set of clave blocks having substantially equal exterior dimensions and different volumes of the open cavities therewithin. Furthermore, as clearly disclosed by Simons, “Different sizes of wooden agogo bells or blocks are frequently used in a single agogo instrument to produce different tones or pitches of musical sound.” (see col. 1, lines 49-51).

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Thus, even if the combination of and modification of Bartholomae and Simons suggested by the examiner could be made, the resulting musical instrument still would lack the set of clave blocks having equal exterior dimensions and different volumes defined solely by the solid material of the clave blocks.

Accordingly, the rejection of claims 1-8 under 35 U.S.C. 103(a) over Bartholomae and Simons is improper.

Further regarding claim 4: the examiner erroneously alleges that Bartholomae teaches that the bodies of the sounding members (j and j') have mounting rings (i). contrary to the examiner's allegations, Bartholomae clearly defines the element (i) as the holes formed in the bases of the sounding members (j and j') (page 1, lines 43-45), not the mounting rings. Therefore, the rejection of claim 4 under 35 U.S.C. 103(a) over Bartholomae and Simons is improper.

Further regarding claims 7 and 8: the examiner erroneously alleges that Simons teaches bodies of different volumes having different thickness of the solid material, and openings having different perimeters (col. 3, lines 61-65). In fact, what Simons teaches is that the "acoustical coupling is preferably achieved by the wall thickness, slot depth and shape of the interior of chamber as set forth in the above embodiments".

It appears that Simons suggests that the thickness of the wall 24 of the body 23 of each individual agogo bell 20 may be modified to produce various sound qualities and pitches, and

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that the dimensions of the chamber 21 may also be modified to produce various sound qualities and pitches. However, none of the references cited by the examiner teaches or suggests the set of clave blocks having substantially equal exterior dimensions and different volumes of the open cavities therewithin, wherein the bodies of different volumes have different thickness of the solid material or the cavities include openings having different perimeters. Therefore, the rejection of claims 7 and 8 under 35 U.S.C. 103(a) over Bartholomae and Simons is improper.

It is respectfully submitted that claims 1-8 define the invention over the prior art of record and are in condition for allowance, and notice to that effect is earnestly solicited. Should the Examiner believe further discussion regarding the above claim language would expedite prosecution they are invited to contact the undersigned at the number listed below.

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